

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JOAN KENDALL,

Plaintiff,

v.

NO. 3:93CV124-S-D

OXFORD HOUSING AUTHORITY
AND PHYLLIS JOHNSON,

Defendants.

OPINION

In this case, plaintiff alleges that defendants violated the First, Fourth, and Fourteenth Amendments and the Fair Housing Act when they inspected her home for compliance with the authority's housekeeping standards and then evicted her and her family for failing to comply with those standards. In August, 1993, this court conducted an extensive hearing on plaintiff's motion for preliminary injunction, which was denied. This cause is presently before the court on defendants' motion and amended motion for summary judgment.

I.

As to plaintiff's First Amendment retaliation claim, defendants, possibly without realizing it, precluded summary dismissal of that claim themselves. Specifically, defendants argued that the "credibility of [plaintiff's] self-serving testimony is placed into serious doubt when it is balanced against

not only the testimony of the OHA [Oxford Housing Authority] officials, but also against OHA records" and that plaintiff's "burden [of proof] could only be met if the self-serving testimony is believed to outweigh all of the other evidence offered on this issue."

One of the basic tenets of summary judgment law is that the court is not to make credibility determinations, weigh evidence, or draw from the facts legitimate inferences for the movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Rather, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in her favor. Anderson, 477 U.S. at 255. Defendants' acknowledgment that credibility lies at the heart of the First Amendment issue prevents summary dismissal of that claim.

II.

In her original complaint, plaintiff sought relief under the Americans with Disabilities Act (ADA). Defendants, in turn, requested summary dismissal of that claim, arguing that the housekeeping standards at issue "did not violate the ADA either by their express terms or by Defendants' application thereof." In response, plaintiff amended her complaint, substituting a claim under the Fair Housing Act for the ADA claim and arguing there is a genuine issue of material fact "as to whether the Defendants failed to make... 'reasonable accommodations' for Plaintiff." Rather than filing a rebuttal memorandum in response to plaintiff's

position, defendants filed an amended motion for summary judgment in which they maintained that the claim substitution did "nothing to establish or create a genuine issue of material fact" but failed to analyze those facts in light of the language of the Fair Housing Act. Accordingly, summary judgment on that claim is denied.

III.

At the conclusion of the preliminary injunction hearing, the court specifically found that

the cleanliness regulations adopted by the Housing Authority are reasonable and necessary and directly related to improving and maintaining attractive public housing. Indeed...these regulations comply with the Code of Federal Regulations, and...have been approved by HUD....In signing the lease to occupy the premises, plaintiff consented to cleanliness inspections by the public Housing Authority staff. The question is not whether this provision is fair to her or in keeping with the Fourth Amendment and her rights under it. Clearly, she had the choice whether to occupy these premises under the terms and conditions of this lease, and in so doing, she removed any objection to inspections.

Nothing has been presented to alter the court's view of that issue, which plaintiff agrees is a question of law for the court. Furthermore, the court is of the opinion that the reasoning behind its prior ruling applies with equal force to any privacy claim which plaintiff may have. The public housing lease signed by plaintiff stated:

Tenant agrees that the duly authorized agent, employee, or representative of Management will be permitted to enter Tenant's dwelling unit for the purpose of examining the condition thereof or for making improvements and/or repairs....For...routine inspections...a minimum 3 day written notice will be given [by] management.

In making this agreement and accepting public housing, plaintiff

waived any objections she may have had to the home inspections, and as the "choice [was] entirely hers," Wyman v. James, 400 U.S. 309, 324 (1971), regarding acceptance of these terms, "nothing of constitutional magnitude is involved." Wyman, 400 U.S. at 324. This is not to say that under other circumstances, e.g., the "early morning mass raid," id. at 325, a constitutional violation might not be found, "[b]ut that is not this case. Facts of that kind present another case for another day." Id. Summary judgment on the constitutional claims is therefore appropriate.

An appropriate order shall issue.

This 23rd day of November, 1994.

CHIEF JUDGE